

Social Security Administration

§ 410.454

§ 410.430 Ventilatory studies.

Spirometric tests to measure ventilatory function must be expressed in liters or liters per minute. The reported maximum voluntary ventilation (MVV) or maximum breathing capacity (MBC) and 1-second forced expiratory volume (FEV₁) should represent the largest of at least three attempts. The MVV or the MBC reported should represent the observed value and should not be calculated from FEV₁. The three appropriately labeled spirometric tracings, showing distance per second on the abscissa and the distance per liter on the ordinate, must be incorporated in the file. The paper speed to record the FEV₁ should be at least 20 millimeters (mm.) per second. The height of the individual must be recorded. Studies should not be performed during or soon after an acute respiratory illness. If wheezing is present on auscultation of the chest, studies must be performed following administration of nebulized broncho-dilator unless use of the later is contraindicated. A statement shall be made as to the individual's ability to understand the directions, and co-operate in performing the tests. If the tests cannot be completed the reason for such failure should be explained.

§ 410.432 Cessation of disability.

(a) Where it has been determined that a miner is totally disabled under § 410.412, such disability shall be found to have ceased in the month in which his impairment, as established by medical or other relevant evidence, is no longer of such severity as to prevent him from engaging in comparable and gainful work.

(b) Except where a finding is made as specified in paragraph (a) of this section which results in an earlier month of cessation, if a miner is requested to furnish necessary medical or other evidence or to present himself for a necessary medical examination by a date specified in the request or a date extended at the miner's request for good cause, and the miner fails to comply with such request, the disability may be found to have ceased in the month within which the date for compliance falls, unless the Administration determines that there is a good cause for such failure.

(c) Before a determination is made that a miner's disability has ceased, such miner shall be given notice and an opportunity to present evidence including that from medical sources of his own choosing and arguments and contention that his disability has not ceased.

§ 410.450 Death due to pneumoconiosis, including statutory presumption.

Benefits are provided under the Act to the eligible survivor of a coal miner who was entitled to benefits at the time of his death, or whose death is determined to have been due to pneumoconiosis. (For benefits to the eligible survivors of a miner who is determined to have been totally disabled due to pneumoconiosis at the time of his death, regardless of the cause of death, see §§ 410.410 through 410.430.) Except as otherwise provided in §§ 410.454 through 410.462, the claimant must submit the evidence necessary to establish that the miner's death was due to pneumoconiosis and that the pneumoconiosis arose out of employment in the Nation's coal mines.

§ 410.454 Determining the existence of pneumoconiosis, including statutory presumption—survivor's claim.

(a) *Medical findings.* A finding of the existence of pneumoconiosis as defined in § 410.110(o)(1) may be made under the provisions of § 410.428 by:

- (1) Chest roentgenogram; or
- (2) Biopsy; or
- (3) Autopsy.

(b) *Presumption relating to respiratory or pulmonary impairment—survivor's claim.* (1) Even though the existence of pneumoconiosis is not established as provided in paragraph (a) of this section, if other evidence demonstrates the existence of a chronic respiratory or pulmonary impairment from which the miner was totally disabled (see § 410.412) prior to his death, it will be presumed in the absence of evidence to the contrary (see paragraph (b)(2) of this section) that the death of the miner was due to pneumoconiosis.

(2) This presumption may be rebutted only if it is established that the miner did not have pneumoconiosis, or that

his respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine.

(3) The provisions of this paragraph shall apply where a miner was employed for 15 or more years in one or more of the Nation's underground coal mines; in one or more of the Nation's other coal mines where the environmental conditions were substantially similar to those in an underground coal mine; or in any combination of both.

(4) However, where the evidence shows a work history reflecting many years of such coal mine employment (although less than 15) as well as a severe lung impairment, such evidence may be considered, in the exercise of sound judgment, to establish entitlement in such case: *Provided*, That a mere showing of a respiratory or pulmonary impairment shall not be sufficient to establish such entitlement.

(c) *Other relevant evidence.* Even though the existence of pneumoconiosis is not established as provided in paragraph (a) or (b) of this section, a finding of death due to pneumoconiosis may be made if other relevant evidence establishes the existence of a totally disabling chronic respiratory or pulmonary impairment, and that such impairment arose out of employment in a coal mine. As used in this paragraph, the term *other relevant evidence* includes medical tests such as blood gas studies, electrocardiogram, pulmonary function studies, or physical performance tests, and any medical history, evidence submitted by the miner's physician, his spouse's affidavits, and in the case of a deceased miner, other appropriate affidavits of persons with knowledge of the individual's physical condition, and other supportive materials. In any event, no claim for benefits under part B of title IV of the Act shall be denied solely on the basis of a negative chest roentgenogram (X-ray).

§ 410.456 Determining origin of pneumoconiosis, including statutory presumption—survivor's claim.

(a) If a miner was employed for 10 years or more in the Nation's coal mines, and suffered from pneumoconiosis, it will be presumed, in the absence of persuasive evidence to the

contrary, that the pneumoconiosis arose out of such employment.

(b) In any other case, the claimant must submit the evidence necessary to establish that the pneumoconiosis from which the deceased miner suffered, arose out of employment in the Nation's coal mines. (See § 410.110 (h), (i), (j), (k), (l), and (m).)

§ 410.458 Irrebuttable presumption of death due to pneumoconiosis—survivor's claim.

There is an irrebuttable presumption that the death of a miner was due to pneumoconiosis if he suffered from a chronic dust disease of the lung which meets the requirements of § 410.418.

§ 410.462 Presumption relating to respirable disease.

(a) Even though the existence of pneumoconiosis as defined in § 410.110 (o)(1) is not established as provided in § 410.454(a), if a deceased miner was employed for 10 years or more in the Nation's coal mines and died from a respirable disease, it will be presumed, in the absence of evidence to the contrary, that his death was due to pneumoconiosis arising out of employment in a coal mine.

(b) Death will be found due to a respirable disease when death is medically ascribed to a chronic dust disease, or to another chronic disease of the lung. Death will not be found due to a respirable disease where the disease reported does not suggest a reasonable possibility that death was due to pneumoconiosis. Where the evidence establishes that a deceased miner suffered from pneumoconiosis or a respirable disease and death may have been due to multiple causes, death will be found due to pneumoconiosis if it is not medically feasible to distinguish which disease caused death or specifically how much each disease contributed to causing death.

§ 410.470 Determination by nongovernmental organization or other governmental agency.

The decision of any nongovernmental organization or any other governmental agency that an individual is, or is not, disabled for purposes of any contract, schedule, regulation, or law, or